

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-213027 **DATE:** June 27, 1984
MATTER OF: S.A.F.E. Export Corporation

DIGEST:

Where solicitation for installing government-furnished smoke detectors requires that a handling permit be submitted to the contracting officer's representative at the pre-construction conference, requirement is not a definitive criterion of responsibility since it is not a prerequisite to award but must be satisfied by the contractor after award but prior to performance. Since contracting officer's affirmative determination of low offeror's responsibility did not involve a definitive criterion, and there has been no showing of fraud or bad faith on the part of procuring officials, GAO dismisses the protest.

S.A.F.E. Export Corporation protests the award of a contract under request for quotations No. DAJA04-83-Q-0828 issued by the United States Army Contracting Agency, Europe, for installing government-furnished smoke detectors in military housing in Germany.

The solicitation required "offerors" to obtain a handling permit, pursuant to the German Radiation Protection Ordinance, for the installation of the smoke detectors, and provided that:

"A copy of this handling permit has to be submitted to the COR [Contracting Officer's Representative] at the pre-construction conference."

The government-furnished smoke detectors have not been approved for general use under German law. S.A.F.E. maintains that handling permits are issued only for the installation of approved smoke detectors and that therefore German firms would be precluded from obtaining the permit required by the solicitation. For this reason,

S.A.F.E. maintains that it was improper for the contracting agency to consider quotations from German firms and to make award to such a firm. In contrast, S.A.F.E. contends, firms, such as itself, who do business exclusively with the U.S. forces in Europe, are exempt from German licensing requirements.

Contracting officers may, by appropriate solicitation language, require offerors to obtain a specific license or permit as a prerequisite to award. Typically, such a requirement would constitute a definitive criterion which must be satisfied by the apparently successful offeror in order for the contracting officer to find it responsible and award it the contract. Here, however, there was no requirement to submit the handling permit prior to award. It was not required to be provided until the time of the pre-construction conference, which occurred after the contract was awarded but prior to commencement of performance. In this instance, therefore, we do not regard the requirement for a handling permit as a definitive criterion of responsibility. It follows that in determining that the low offeror was responsible, the contracting officer made the kind of discretionary business judgment which we have often stated we would not review except where there is a showing of fraud or bad faith on the part of procuring officials or the failure to apply a definitive criterion of responsibility. In view of our conclusion that there was no definitive criterion of responsibility in this solicitation, and in the absence of a showing of possible fraud or bad faith, we decline to review the matter and dismiss the protest.

Harry R. Van Cleve
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Acting General Counsel